

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

PARKERSBURG DIVISION

JAMES JACKSON,

Plaintiff,

v.

CIVIL ACTION NO. 6:06-cv-00129

DARRELL HARPER and
STEPHEN M. HORN,

Defendants.

MEMORANDUM OPINION AND ORDER


Pending are Defendant's Complaint [Docket # 2] and Application to Proceed Without Payment of Fees [Docket # 1]. These matters were referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and has recommended that the court **FIND** that Plaintiff's Complaint fails to state a claim upon which relief can be granted, **DISMISS** Plaintiff's Complaint, and **DENY AS MOOT** Plaintiff's Application to Proceed without Prepayment of Fees. Neither party has filed objections to the Magistrate Judge's findings and recommendations.

The failure to object to a magistrate judge's report may be deemed a waiver on appeal of the substance of the report and the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *Campbell v. United States D. Ct. N.D. Cal.*, 501 F.2d 196, 206 (9th Cir. 1974). The court has reviewed the Magistrate Judge's findings of fact and recommendations and finds no clear error on

the face of the record. Therefore, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and orders judgment consistent with the findings and recommendations. The court **FINDS** that Plaintiff's Complaint fails to state a claim upon which relief can be granted, **DISMISSES** Plaintiff's Complaint, and **DENIES AS MOOT** Plaintiff's Application to Proceed without Prepayment of Fees.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: August 9, 2006



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE